



DAE (M+S) #13

PTO/SB/65 (05-03)  
Approved for use through 5/31/2006. OMB 0651-0016  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF  
MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(b))**

Docket Number (Optional)

3747-021

**RECEIVED**

**AUG 14 2003**

**OFFICE OF PETITIONS**

Mail to: Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450  
Fax: (703) 308-6916

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (703) 305-9282.

Patent No. 5,902,480 Application Number 08/855,387

Issue Date May 11, 1999 Filing Date May 13, 1997

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue application) leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

**Also complete the following information, if applicable**

The above-identified patent:

- ☐ is a reissue of original Patent No. \_\_\_\_\_ original issue date \_\_\_\_\_ ;  
original application number \_\_\_\_\_  
original filing date \_\_\_\_\_
- ☐ resulted from the entry into the U.S. under 35 U.S.C. 371 of international  
application \_\_\_\_\_ filed on \_\_\_\_\_

**CERTIFICATE OF MAILING (37 CFR 1.8(a))**

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

August 12, 2003

Date

Signature

David D. Murray

Typed or printed name of person signing Certificate

Adjustment date: 08/19/2003 AKELLEY  
08/14/2003 SLUANG1 00000003 5902480  
01 FC:1599 -1020.00 OP  
08/19/2003 AKELLEY 00000004 5902480  
01 FC:1599 890.00 OP  
02 FC:1999 130.00 OP

[Page 1 of 4]

This collection of information is required by 37 CFR 1.378(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

08/14/2003 SLUANG1 00000003 5902480

01 FC:1599 1020.00 OP

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## 1. SMALL ENTITY

☐ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

## 2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g).

## 3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
<input checked="" type="checkbox"/> \$ 890.00	3 1/2 yr fee	(1551)	<input type="checkbox"/> \$ _____	3 1/2 yr fee	(2551)
<input type="checkbox"/> \$ _____	7 1/2 yr fee	(1552)	<input type="checkbox"/> \$ _____	7 1/2 yr fee	(2552)
<input type="checkbox"/> \$ _____	11 1/2 yr fee	(1553)	<input type="checkbox"/> \$ _____	11 1/2 yr fee	(2553)

MAINTENANCE FEE BEING SUBMITTED \$ 890.00

## 4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(1) of \$ 130.00 (Fee Code 1558) must be paid as a condition of accepting unavoidably delayed payment of the maintenance fee.SURCHARGE FEE BEING SUBMITTED \$ 130.00

## 5. MANNER OF PAYMENT

☒ Enclosed is a check for the sum of \$ 1020.00☐ Please charge Deposit Account No. \_\_\_\_\_ the sum of \$ \_\_\_\_\_. A duplicate copy of this authorization is attached.☐ Payment by credit card. Form PTO-2038 is attached.

## 6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

☒ The Director is hereby authorized to charge any maintenance fee, surcharge or petition fee deficiency to Deposit Account No. 23-1925A duplicate copy of this authorization is attached.

7. OVERPAYMENT

As to any overpayment made please

☒ Credit to Deposit Account No. 23-1925

OR

☐ Send refund check.

**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

8. SHOWING

The enclosed statement will show that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that this petition is being filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The statement must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

9. PETITIONER(S) REQUESTS THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED.

August 12, 2003  
Date

(734) 302-6000  
Telephone Number

David D. Murray  
Signature(s) of Petitioner(s)

David D. Murray  
Typed or printed name(s)

Brinks Hofer Gilson & Lione  
Address

P.O. Box 10395  
Chicago, IL 60610  
Address

ENCLOSURES:

- ☒ Maintenance Fee payment  
☒ Statement why maintenance fee was not paid timely  
☒ Surcharge under 37 CFR 1.20(i)(1) (fee for filing the maintenance fee petition)  
☒ Return Postcard

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

August 12, 2003  
Date

David D. Murray  
Signature

David D. Murray  
Typed or printed name

STATEMENT

(In the space below, please provide the showing of unavoidable delay recited in paragraph 8 above.)

SEE ATTACHED STATEMENT SHEET

(Please attach additional sheets if additional space is needed)

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OFFICE OF PETITIONS

STATEMENT

The events leading to the unavoidable non-payment of this maintenance fee can be traced back several months when the undersigned attorney reduced his work schedule to three days per week. Shortly thereafter, secretarial reassignments were undertaken in the fall of 2002.

The secretary then assigned to me was distracted by both a divorce and significant health problems. During the winter and spring of 2003, the distractions continued and in March she underwent major surgery and was away from the office intermittently for several weeks.

While I was able to maintain significant matters on my docket, it is apparent, in retrospect that it did not receive the necessary attention. During this time, temporary secretaries were not available and thus, inevitably, certain matters did not always receive timely attention.

It then became apparent that during this time, recognition and filing of acknowledgements and notices had not been attended to as two secretaries, who had other work assignments, spent over a day properly disbursing a rather significant number of notices and postcard receipts to their appropriate files.

Late in April, another secretary was assigned to me who was unfamiliar with the practice of patent law and unfamiliar, as well, with the foundational significance of the docket to patent practice. It was during this period of time that the maintenance fee was not paid and such failure to pay was unavoidable. This secretary has since been released.

On June 1, I was provided a new, skilled and experienced secretary who has extensive familiarity not only with the patent prosecution practice but also the importance of proper docketing and monitoring of the docket as it relates to patent prosecution. One of her first undertakings was to examine and properly disburse a large number of notices and postcards relating to patent prosecution and docket activity.

Also during this period from early 2003, a changeover from local docketing within our satellite office and a transfer of such responsibilities to our Chicago office was occurring. Notwithstanding the nominal absorption of our docket, it is now apparent to me, based upon recent discussions with others, that a problem exists with regard to the payment of maintenance fees on United States Patents. Such

failure is evidenced by the attached page which is for the appropriate time period relating to the subject patent and which does not include any reference to the final payment date.

From the time of receipt of the Notice of Patent Expiration in this office in early July to the present time I have attempted to understand why this matter was not properly docketed and to correct any possible cause for this error.

It is unreasonable to expect that this attorney, responsible for hundreds of cases can, from month to month, recall maintenance fee due dates without the support of an accurate docket and skilled secretarial assistance. The confluence of these factors resulted in the unavoidable failure to pay the maintenance fee which was due on May 11, 2003. Grant of this Petition and reinstatement of United States Patent No. 5,902,480 is therefore appropriate and respectfully requested.